In the High Court of Judicature at Madras

Dated: 09/07/2003

Coram

The Honourable Mr.Justice R.Jayasimha Babu
and
The Honourable Mr.Justice N.V.Balasubramanian

Original Side Appeal No.7 of 2003
and O.S.A.No. 8 of 2003
and
O.As.No.840, 5056 and 5057 of 2002
in C.S.No.848 of 2002

Dr. K.M.Cherian ... Appellant in appeals/
Applicant in Applns.

-Vs-

K.V.George ... Respondent in Appeals/
Respondent in Applns.

Original Side Appeals filed under Order XXXVI Rules 11 of the Original Side Rules read with Clause 15 of Letters Patent against the order made on 23.09.2002 in Original Applications No.329 and 1852 of 2002 in C.S. No.322 of 2002 by a learned single Judge of this Court.

Application No.840 of 2002 is filed seeking for an order of injunction restraining the respondent or his agent or servant or subordinate or anybody claiming under him from interfering in any manner whatsoever with the functioning of the applicant as Chairman of Pondicherry Institute of Medical Sciences (Society), Ganapathychettykulam, Kalathumedu Salai, Pondicherry 605 014 a unit of Madras Medical Mission till the disposal of the suit.
Application No.5056 of 2002 is filed seeking for an interim order to stay the operation of the resolution dated 26.10.2002 of the defendant/respondent communicated vide letter dated 05.11.2002 to the plaintiff/applicant pending disposal of the suit.
Application No.5057 of 2002 is filed seeking for an interim order directing the defendant/respondent to deposit all moneys that were received from the PIMS candidates into an account with a nationalised bank and render to the plaintiff full accounts concerning the receipt of the funds pending disposal of the suit.

!For Appellant/Applicant : Mr.C.Ramakrishna,

Senior Counsel
for Mr.Vishnu Mohan

^For Respondent/Respondent: Mr.Sriram Panchu,
Senior Counsel, for
Mr.V.Achuthan

:JUDGMENT

R. Jayasimha Babu, J.

Appellant is aggrieved by his suspension on 16.04.2002 and subsequent removal on 26.10.2002 from the position of Chairman, Pondicherry Institute of Medical Sciences established, owned and run by the Madras Medical Mission (MMM), a registered society open only to the members of the Orthodox Syrian Church and which presently has hundred and thirty five members. The patron of MMM is the Catholics of the East, and it's President the Bishop of that Church at Madras.

2. The MMM which was registered on 12.01.1982 was initially dependent upon donations, but after it established an Institute of Cardio Vascular Diseases (ICVD) at Chennai in 1987 with the appellant, Dr.K.M. Cherian, a reputed Cardio Thoracic Surgeon, as it's lifetime Director, it was able to generate significant surpluses over the years which together with borrowed funds enabled it to acquire assets worth about Rs.55.00 crores by the year 2000. The total receipts of ICVD from 198 7-88 to 2000-01 was Rs.316.12 crores. The appellant claims the lion's share of the credit for the success of MMM. According to him his professional skills, international reputation, his ability to win friends and influence people and his commitment and constant striving for MMM enabled it to reach it's present level of prestige and affluence.

3. MMM has also established an Institute of Reproductive Medicine and Women's Health despite the appellant's opposition. A Transplant Center was added later.

4. Appellant has been involved with MMM from it's inception. He is a signatory to the Memorandum of Association, was it's first Vice President, and has been a member of it's Governing Board almost continuously and is even now on the Board. He left his position of Medical Superintendent of the reputed Railway Hospital at Perambur in 1987 to become the first and till date the only Director of ICVD. Earlier on 31.03.1985 at the Annual General Meeting of MMM a resolution had been passed in the following terms:

"This Annual General Meeting of the Madras Medical Mission held on 3 1.03.1985 resolves that in consideration of Dr.K.M.Cherian's service in promoting the activities of the Madras Medical Mission (especially The Institute of Cardio Vascular Diseases) and in consideration of leaving his services in the Railway Hospital, Perambur, so that he may engage himself wholly in the service of this Medical Mission Dr. K. M.Cherian is hereby

appointed for life as the head of The Institute of Cardio Vascular Diseases, with a suitable designation to be decided by the Medical Mission's Governing Board. The Governing Board is also hereby authorised to finalise other terms and conditions of his appointment."

5. His emoluments as Director have undergone dramatic growth from Rs.45,000/- per month in 1995-96 to Rs.4.00 lakhs per month in the year 1997-98 and to Rs.12.90 lakhs per month in 2002-03. With the contribution of about Rs.1.54 lakh per month by MMM to his provident fund, his total emoluments now are are over Rs.1.73 crores per annum. Numerous perquisites of substantial value including unlimited foreign travel are also provided. The salary paid to appellant alone amounts to about eighteen per cent of the total monthly wage bill for the 794 employees of MMM. The salary paid to the appellant is about seven times the salary paid to the next highest paid doctor in MMM. According to the appellant, this high level of remuneration is less than the prevailing market rate for a highly skilled surgeon, and is considered by the appellant to be fully justified having regard also to scale of daily fee charged by top end lawyers, high salaries paid to executives at higher levels in large companies, and the huge incomes earned by many of those engaged in business.

5a) Though MMM is registered as a charitable society, and the dedication of it's staff has been praised by visitors, it's concern for the poor appears to be only marginal. The amount set apart for transfer to the fund for poor patients out of net surplus of Rs.182.00 lakhs from the total receipts of Rs.47.61 crores in the year 2001-02, was only Rs.1.3 lakhs. No part of the accumulated fund of about Rs.30.00 lakhs meant for poor patients was utilised during that year.

6. Consistent with MMM's focus on high value activities in the medical field having potential for generating large revenues, it conceived the idea of setting up a self financing medical college as a Christian minority institution sometime in the year 1999. According to the appellant, one of the members of the Governing Board had informed the Board about the possibility of obtaining the requisite consent of the Government for setting up the college in the Union Territory of Pondicherry which is about one hundred and sixty kilometers from Chennai, by spending Rupees one crore on brokers. The appellant asserts that he then took it on himself to secure such consent without incurring expenditure of that kind and magnitude.

7. Pondicherry Institute of Medical Sciences (PIMS) was the name chosen for the Medical college and the Hospital that had necessarily to be set up as part of that project under the applicable regulations, the location of the project being outside Pondicherry town at Ganapathychettypalayam, Kalapet. The estimated cost of the project was Rupees eighty crores, of which about Rs.45.00 crores was to be invested before the college could start functioning. About one fourth of that amount was to come from the surplus revenues of MMM and the balance amount from the Banks in the form of loans. Further investment was apparently to come out of the revenues of the newly established medical college and hospital, the surpluses of MMM, and additional borrowings. Rupees twenty lakhs was to be collected as interest free deposit from each student with certain exceptions. PIMS was to employ many more doctors and staff than all the existing divisions of MMM put together. According to the appellant, the aim was to create a teaching institution and hospital which would meet the highest international standards.

8. The appellant as a member of the Governing Board of MMM was, on 05.02.2000 nominated by the Governing Board of MMM as Chairman of PIMS. The Board's decision in this regard as communicated to the appellant was in the following terms:
"The last Governing Board Meeting was held on 5th February 2000 and it has been decided to appoint Dr.K.M.Cherian as Chairman of the Pondicherry Medical College Managing Committee and constituted 4 Committees from the Board Members to expedite the establishment of the college."

9. On 07.12.2000 the Government of Pondicherry granted the Essentiality certificate required under the Admission to Medical College Regulations 1999 framed by the Medical Council of India under Section 33 of Indian Medical Council Act, 1950, to MMC for establishing a medical college with 100 seats. That Essentiality Certificate, inter alia, reads thus :

"The Madras Medical Mission, Chennai has applied for establishment of medical college at Pondicherry. On careful consideration of the proposal, the Government of Pondicherry has decided to issue an essentiality certificate to the applicant for the establishment of a Medical College with 100 seats."
That certificate also contains a certification by the Pondicherry government, as under:
"(a) The applicant has stated to have purchased 26 acres of land. They have also stated that the 300 bed hospital with all facilities is expected to be completed by July 2001. This would be verified as and when the work is completed.
(b) It is desirable to establish a medical college in the public interest.
(c) Establishment of a medical college at Pondicherry by the Madras Medical Mission is feasible. "

10. The foundation stone for the ten storey PIMS building was laid by the Union Home Minister on 29.07.2000.

11. The Pondicherry University, on 14.08.2001 gave it's consent in principle for affiliating the proposed medical college, namely PIMS to the Pondicherry University.

12. Without informing, consulting, or obtaining the consent of MMM the appellant, his wife, their son and four of his friends signed at Pondicherry on 14.09.2001 the Memorandum and Rules and Regulations of a new society named Pondicherry Institute of Medical Sciences and registered it on the same day. The appellant was to be the Chairman and Chief Executive of that society for life. The contents of the Memorandum as also factum of registration of that society were not revealed to the members of MMM till about seven months later.

13. The Annual General Meeting of the MMC was held on 15.09.2001. The appellant in his address, inter alia, stated,
"I happened to be in Pondicherry on 8th September 2001, when the Chief Minister was being heckled about undue support being given to an organisation,

which has its roots in Madras, as against supporting a local body. After the Assembly Session, he mentioned to me that his hands will be strengthened considerably, in case the Pondicherry Institute of Medical Sciences is governed by a separate Society registered in Pondicherry. A letter to this effect from the Health Ministry of Pondicherry has already been sent to us which was received here in my absence.
I assured the Chief Minister that the Government directive to form a society at Pondicherry to run the PIMS will be honoured by us. As the Chairman of the Pondicherry Institute of Medical Sciences, I have initiated the necessary formalities. With the Present government including the bureaucrats inclined favourably towards us, we should not lose the opportunity of utilising their help for our cause....."

14. That letter of the Pondicherry Government to which appellant referred, and which was signed by the Under Secretary (Health) dated 07 .08.2001, stated, inter alia:
"Government of Pondicherry is of the view that it would be appropriate if a separate Society is registered in Pondicherry for the proposed Medical College in Pondicherry instead of keeping it as a part of the Madras Medical Mission."

15. The appellant however did not inform the Governing Board of MMM of this communication, did not seek any permission from the Board for committing MMM to form a separate society for PIMS or for ratifying his alleged commitment allegedly given orally, and had neither informed nor had obtained the permission from the Board of MMM for " initiating necessary formalities" for constituting a separate society for PIMS.

16. MMM obtained a certificate regarding minority status of MMM from the Tahsildar, Ambattur, within whose jurisdiction MMM is located, on 10.12.2001 which read as under:
"
CERTIFICATE
Certified that M/s Madras Medical Mission which is functioning at No.4A, Dr.J.Jayalalitha Nagar, Mogappair, Chennai-50 is a society registered under the Societies Registration Act, 1975 (Tamilnadu Act - 27 of 1975) and as per the memorandum and rules and regulations of the society, membership of the society is restricted too members of the Orthodox Syrian Church, which is a minority community. As such Madras Medical Mission enjoys a minority status.
Note: This certificate is issued in connection with getting recognition from medical council of India only.
Sd/-
Tahsildar, Ambattur"

17. On 01.03.2002 the Government of India issued a letter of intent to MMC for establishing the medical college at Pondicherry.

18. In response to letters sent by appellant seeking a declaration of it's minority status, the Pondicherry Government wrote to him on 04.03.2002, as under:
"No.1240/114/Health/99

GOVERNMENT OF PONDICHERRY
CHIEF SECRETARIAT (HEALTH)

Pondicherry, dated 4.3.2002
To
The Chairman,
Pondicherry Institute of Medical Sciences,
4-A, Dr.J.Jayalalitha Nagar,
Mugappair, Chennai 600 050.

Sir,

Sub : Health - Pondicherry Institute of Medical Sciences,Pondicherry run by Pondicherry Institute of Medical Sciences Society. Pondicherry - Declaration as Minority Institution - Reg.

Ref : Your letters dated 19.10.2001 and 17.11.2001.

Approval of the Government of Pondicherry granting the status of religious Minority (Christian) Institution to the Pondicherry Institute of Medical Sciences, Pondicherry run by Pondicherry Institute of Medical Sciences Society, Pondicherry is hereby conveyed. Consequently the said college can admit students belonging to the religious Minority (Christians) Community to which the society belongs.
....."

19. The letter from the Government states that PIMS is 'run' by the PIMS Society, though the essentiality certificate had been granted by the Government not to that society, but to MMM. The Government's letter of 04.03.2002 had not been disclosed to the Board of MMM, and came to light only after 08.04.2002 when the appellant sent a circular letter to the members of MMM.

20. The appellant sent a letter on 08.04.2002 to all the members o MMM the relevant portions of which read thus:
"During the last General Body Meeting of our Society, I had mentioned to you about the request of Pondicherry Government to have a society registered in Pondicherry for running of our institute. A letter was received from the Secretary, Department of Health, Government of Pondicherry on 7th August 2001 to this effect (copy enclosed).
Subsequently, during my meeting with the successive Chief Ministers, they have also asked me about the progress of registering a society in Pondicherry. I had reported this to you during the last General Body meeting.
A Society by the name, Pondicherry Institute of Medical Sciences was registered as a non-profit society on 14th September 20 01 to fulfil our commitment to the Pondicherry Government (Memorandum enclosed).
When the Medical Council of India had asked for a Certificate showing the Minority Status for our organisation, Madras Medical Mission could not get this certificate from Tamilnadu Government immediately. We, therefore

approached the Pondicherry Government for such a certificate and this was given to us on the basis of the Pondicherry Institute of Medical Sciences's Society registered at Pondicherry on a permanent basis (Certificate No.1240/H4/Health/99, which is enclosed.
I am enclosing a copy of the Articles of Association of Pondicherry Institute of Medical Sciences' Society, which was registered in Pondicherry. All the objectives mentioned in the Articles of Association of Madras Medical Mission are also mentioned in the Articles of Association of the Pondicherry Institute of Medical Sciences. Two important variations in the Articles of Association of Pondicherry Institute of Medical Sciences from that of Madras Medical Mission are :
1)Membership of Pondicherry Institute of Medical Sciences is open to all denominations of Christians.
2) Total membership is restricted to 200 as against 140 of Madras Medical Mission.

These two changes were considered necessary for the following reasons:-
a) It was necessary to take some additional members from Pondicherry State and if we had restricted the membership to Malankara Orthodox Christians only, we would not have adequate representation from Pondicherry.
b) It was felt that the membership should be enlarged to get some influential NRIs, especially from the medical community as members to get technical and financial support and also to attract some NRI students later, which are our main source of financial support.

The membership fee was also fixed at Rs.25,000/- as it was felt that a non-profit society which is promoting a project costing about Rs.10 0 crores should show that its members have some financial stability and involvement.

ALL THE MEMBERS OF MADRAS MEDICAL MISSION ARE ELIGIBLE TO BECOME MEMBERS OF THE NEW SOCIETY.
Since this Society was formed urgently to satisfy Pondicherry Government, it was registered with the minimum required number of 7 members with provision for enlarging the membership and the Governing Board. The 7 members who promoted this society are all people who are willing to step down from the Governing Board so that more members of a representative character can be co-opted to the Governing Board after the enrollment of membership is completed. I am writing this letter to request all of you to enroll as members to Pondicherry Institute of Medical Sciences' Society immediately, so that the new society can duly constitute a full fledged Governing Board to run the society.

As per the desire of Pondicherry Government, the Management of the Pondicherry Institute of Medical Sciences has to be entrusted to the Pondicherry Institute of Medical Sciences' Society. So far, all our investments in Pondicherry Institute of Medical Sciences were done by Madras Medical Mission. All the loans from financial institutions have also been taken in the name of Madras Medical Mission. The question of evolving a system by which the management of Pondicherry Institute of Medical Sciences can be done by the Society registered in Pondicherry has been under

consideration with financial and legal experts. Their considered view is that to avoid additional outflow of money in transferring of assets, it will be better, if the Pondicherry Institute of Medical Sciences is continued to be owned by Madras Medical Mission, but its management is transferred by Madras Medical Mission to the society of PIMS registered at Pondicherry. It will be like a Managing Agency System where the PIMS society will run the Institute on behalf of MMM. This should not be a problem, since PIMS Society will be run by the members of the MMM. The surplus amount generated by PIMS will be credited to Madras Medical Mission. Similarly, the duration for which the management of the institute should be given to the PIMS society can also be decided based on discussions. My own feeling is that the Management may be given for a period of at least 30 years, so that PIMS can develop long term policies for the management of the institute. With the proposals to set up a Nursing College and a Basic Sciences faculty in the offing, the chances of PIMS becoming a deemed university are extremely bright, if this status is beneficial to us. Hence, a long term perspective is vital. For the services rendered, the PIMS Society could be suitably compensated.
....."

21. It is evident from this letter that appellant did not at any time inform, consult, or obtain the consent of Governing Board of MMM for such an important matter as the formation of a new society for owning or running MMM's most ambitious project till date involving a huge outlay of eighty crores. The society was claimed to have been formed in order to satisfy an alleged 'requirement' of the Pondicherry Government in a letter which had not been disclosed to the Board of MMM. There was no compelling necessity to form such a society as there was no such requirement in law. The apparent reason for the ' urgency' was the Annual General Meeting of 15.09.2001 of MMM at which the appellant wanted to be in a position claim to have informed the members of MMM about the society, the formation and composition of which in fact was not disclosed at the AGM, and remained undisclosed till 0 8.04.2001. The pre-planned move of the appellant was evident in the consultation with the financial and legal experts that he had undertaken on his own with a view to take over the management of PIMS exclusively by the members of his family and his close friends. The concept of managing agency referred to in the letter could only have been based on legal advice obtained without informing MMM although the object of the consultation was to deprive MMM of control over the PIMS.

22. The Rules registered along with Memorandum of Soceity registered by the appellant were specifically designed to ensure the complete control of that society by the appellant:
"Office Bearers:
39. Chairman:
Dr.K.M. Cherian shall be the permanent Chairman and Chief Executive and shall hold office till his life or until he resigns whichever is earlier. After his life time or if he resigns, the Governing Board shall elect a Chairman and/or Chief Executive among themselves preferably from the field of medicine and he/she will hold office for a period of 3 years initially."

Rule 33. Constitution of the Governing Board:
The Board shall have a maximum of 9 (Nine) elected members apart from the Chairman and two members nominated by the Chairman. The members who are nominated by the Chairman will be people of eminence whose expertise and experience will be of great value to the society. The Chairman will also be the Chief Executive in addition to holding the post of Chairman. Nominated members are not eligible for any powers including voting. The total number of members at any point of time shall be a maximum of 12 all inclusive.
Rule 24. The Board has the power to refuse membership or to refuse renewal of membership to any one without assigning any reason. The Board is vested with the powers to expel any life member or any other member for improper conduct or for not abiding by the Rules and Regulations of the Society after giving proper notice in writing."

The Rules contemplate only life membership and requires that sum of Rs.25,000/- be paid as admission fee, the membership being confined to "any Christian".

23. After the receipt of this letter, as was only to be expected, a meeting of the Governing Board of MMM, was hurriedly convened. The meeting was held on 16.04.2002 to consider the contents of the appellant's letter. The meeting was attended by seventeen of the twenty members of the Board. The appellant who was also member of the Governing Board was away at Seoul, South Korea where he stayed till 20.04.2 002 His hotel bill for approximately 900 U.S. $ and the bill for the air tickets in the sum of about Rs.90,000/- all of which was paid for by MMM have been filed by the respondents. Appellant was not given notice of this meeting on the ground that he was not in India and could not have attended that meeting even if notice had been given. The Governing Board's decisions at that meeting as contained in the documents filed by the respondents read us under:
"Following are the decisions taken at the extraordinary meeting of the Governing Board of the Madras Medical Mission held on 16th April 20 02, at 8.00 am.
1.The members expressed the view that it was illegal to form a society by the name of Pondicherry Institute of Medical Sciences and registering the same at Pondicherry by Dr. K.M. Cherian and others, without the knowledge and express permission of the Madras Medical Mission or its Governing Board when Dr. K.M. Cherian himself is the Chairman of the Pondicherry Institute of Medical Sciences, a unit of Madras Medical Mission.
2.The members also expressed the view that (a) Dr.K.M. Cherian should not be allowed to hold the position of Chairman of Pondicherry Institute of Medical Sciences (of the MMM) for a period of three months from 16th of April 2002, and (b) during this period all powers and responsibilities of the Chairman shall be vested with the Secretary as the Chief Executive of the Madras Medical Mission, and (c) that a notice be issued to him giving the reasons for these above actions by the Governing Board and (d) instructing him to take corrective steps to retract within the notice period all his actions which have gone against the interests of the Madras Medical Mission and (e) to inform him that the Board will review this matter and take a final decision after hearing his views within the stipulated period.
3.The Governing Board authorizes the Secretary to issue a letter to the

members of the MMM informing that Dr. K.M.Cherian's letter with regard to this issue has no sanction of the Governing Board.
4.The Governing Board also authorizes the Vice President, Secretary and

Treasurer of the MMM to take all necessary steps to protect the interests of the MMM and its institutions, and all concerned persons be informed of the above decisions."

24. On the same day a letter was sent by the Secretary of MMM to the appellant informing him of the decision taken by the Board to suspend him from the position of Chairman of PIMS, and calling upon him to wind up the society that had been registered by him. The text of that letter is as under:

"Dear Dr.K.M.Cherian,

We refer to your Circular letter MMM/ADMIN-ICVD/2002/LE108 dated 08 .04.2002 together with enclosures sent to all members of the Madras Medical Mission,
From your above letter it is evident that
(a) you have, along with your family and friends, formed a society named Pondicherry Institute of Medical Sciences registered at the Office of the Registrar of Companies, Pondicherry, with Registration No.3 18/2001 dated 14.09.01 under the Societies Registration Act XXI of 18 60, without the express permission of the Madras Medical Mission;

(b) as the Chairman of the Pondicherry Institute of Medical Sciences appointed by the Madras Medical Mission, despite being well aware that the Pondicherry Institute of Medical Sciences is a unit of the Madras Medical Mission, which has been accorded permission by the concerned authorities like the Medical Council of India, the Pondicherry University and the Government of Pondicherry to set up a Medical college, you have deliberately or otherwise, mis-represented to the Pondicherry Government and other bodies and individuals that the Pondicherry Institute of Medical Sciences (Society), for which you claim to be the Chairman for life, is the agency that runs Pondicherry Institute of Medical Sciences, a unit of Madras Medical Mission,

(c) that your contention that the registration of the said society was purportedly to fulfil 'our' commitment to the Pondicherry government is baseless as there was no such commitment from the Madras Medical Mission at any of its meetings,

(d) that you are, under the guise of 'the desire of Pondicherry Government', attempting to coerce the Madras Medical Mission and its members to entrust the running of the Pondicherry Institute of Medical Sciences to the said Pondicherry Institute of Medical Sciences (Society) of which you claim to be the Chairman for life, and

(e) that you are soliciting the enrollment of the members of Madras Medical Mission and others as members of Pondicherry Institute of Medical Sciences (Society), on payment of Rs.25,000/- as membership fee.

Your said actions taken in consonance with your letter dated 8.4.02 establishes beyond doubt that you have acted and continue to act against the interests of the Madras Medical Mission.

The Board has therefore thought it fit to give you an opportunity to rectify the damage caused to the Pondicherry Institute of Medical Sciences and the Madras Medical Mission and retract all your actions against the interest of Pondicherry Institute of Medical Sciences and the Madras Medical Mission by carrying out the following:
(1)take steps to wind up the Pondicherry Institute of Medical Sciences (Society) and
(2) disclose the full details of all financial transactions and dealings, contracts of the said society from the date of its inception; and
(3)disclose the full details of Applications/Permissions made or obtained for the establishment of institutions or for allotment of land or for any assistance from the Government of India, Government of Pondicherry or other statutory bodies by the said Society;

within a period of three months from 16.04.02, to the full satisfaction of the Board, failing which the Board will review the matter to take a final decision.

Please note that pending the final decision of the Board, the Board has resolved that you should not be holding the post of Chairman of Pondicherry Institute of Medical Sciences from 16.04.2002 for a period of three months. During the said period all the powers and responsibilities of the Chairman are vested with the Secretary as Chief Executive of Madras Medical Mission.

Sd/-
K.V.George
Hon. Secretary"

25. The appellant, after receiving that letter, wrote to MMM on 22 nd April 2002 acknowledging the fact that he was no longer the Chairman of the PIMS. That letter reads as under:

"Mr.K.V.George,
Hon. Secretary,
Madras Medical Mission.

Dear Sir,
As intimated vide your letter dated 16th April, 2002 since I am no longer the Chairman of Pondicherry Institute of Medical Sciences, I will not be a party to the various financial borrowings and other actions taken by me in my capacity as Chairman.
I am therefore, informing the banks, other institutions and Governmental agencies accordingly."

26. On May 22, 2002, the President of the MMC Bishop Dr.Yakob Mar

Irenaios wrote the following letter to the Pondicherry Government :

" MADRAS MEDICAL MISSION

May 22, 2002

To
Mr.B.Vijayan,
The Principal Secretary to the Government,
(Health Department)
Government of Pondicherry,
Chief Secretariat, Pondicherry 1.

Respected Sir,

Sub : The Pondicherry Institute of Medical Sciences
1.This is to bring to your kind attention that Dr. K.M.Cherian, Chairman of the Managing Committee of the Pondicherry Institute of Medical Sciences (PIMS), appointed by the Madras Medical Mission (MMM) a registered society, has without the knowledge, concurrence or sanction of the MMM, registered a society in the same name of Pondicherry Institute of Medical Sciences purportedly to run the PIMS, the Medical College being established by the MMM.
2.Taking serious note of the above action, the Governing Board of the MMM decided at its extraordinary meeting chaired by Mr.Varghese Eapen (Vice President) on the 16th of April 2002 at 8.00 am, to issue notice to Dr.K.M. Cherian to retract his actions against the interest of the Madras Medical Mission within three (3) months, and ask him not to continue as the Chairman of the Pondicherry Institute of Medical Sciences of the MMM during this period, and that during this period all powers and responsibilities of the Chairman shall be vested with the Hon. Secretary of MMM Mr.K.V. George.
3.We inform you further (a) PIMS is promoted, funded, owned and run by the Madras Medical Mission and currently Dr. K.M. Cherian is not the Chairman of the Pondicherry Institute of Medical Sciences, and that (b) the MMM has not given any permission to Pondicherry Institute of Medical Sciences (Society) of which Dr. Cherian claims to be the Chairman for life, to manage the affairs of the PIMS of the Madras Medical Mission or any of its affiliate institutions to be established.
4.We therefore request you not to entertain any communication from Dr.K.M.Cherian in the capacity as Chairman of the PIMS sponsored by the Madras Medical Mission or in connection with the establishment of the PIMS or its affiliate institutions. All such correspondences henceforth may please be addressed to Mr.K.V.George, Hon. Secretary to MMM and Officiating Chairman, PIMS.
5.Please find enclosed a true copy of the decisions taken at the extraordinary meeting of the Governing Board of the MMM held on April 16 th 2002 referred above for your perusal and necessary action.
Thanking you,
Yours faithfully,
Sd/-
Bishop Dr.Yakob Mar Irenaios, President (MMM)"

27. The appellant instituted the suit C.S. No.322 of 2002 on the original side of this Court on 13.05.2002 almost a month after his suspension. He also sought an interim injunction in O.A. No.322 of 2002. The learned single Judge directed the maintenance of status quo. That order was of no help to the appellant as the appellant was not functioning as the Chairman of PIMS as on that day. Subsequently, the appellant filed another application in O.A. No.1852 of 2002 seeking an interim order permitting him to act as Chairman of PIMS and for exercising of power pertaining to administrative, technical matters and development activities of the MMC and the PIMS. After notice to MMC and after hearing counsel for the parties, the learned single Judge dismissed both applications on 23.09.2002.

28. While dismissing the applications the learned single Judge gave time to the appellant till 21.10.2002 to submit his explanation in response to MMC's letter dated 16th April 2002, the learned Judge having been of the view that that letter was in the nature of a notice to show cause. Thereafter, the appellant while reserving his right to challenge the order of the learned Judge submitted his reply. In that reply though he contended that his act of registering the society was not an act which was against the interest of MMC, he nevertheless did not agree to wind up that society, and did not disclose the information/documents that had been sought by MMM.

29. The Governing Body of MMM at it's meeting held on 26.10.2002 notice of which meeting had been given to appellant, considered that reply and resolved to remove the appellant from the post of Chairman of the Managing Committee of PIMS. It also authorised the Honorary Secretary to communicate the decisions of the Governing Board to the appellant, to take steps necessary to protect the interest of MMC and PIMS and initiate such legal proceedings against the PIMS society and others connected with the society to protect the interest of MMC. The letter dated 05.11.2002 conveying the decision of the Governing Board to the appellant reads as under:

"Dear Dr. K.M.Cherian,

I have been authorised by the Governing Board of the Madras Medical Mission which met on the 26th of October 2002 at Hotel Le Royal Meridian, Chennai 600 016 at 4.30 P.M. to communicated the decisions taken at the meeting.

After considering and discussing your letter dated 21.10.2002 (together with annexures) in reply to my letter dt. 16.04.2002, the Governing Board noted the following:

(a) That you admit to having formed the PIMS (Society) without the specific permission of the Madras Medical Mission, (Para 19 of your letter dated 21.10.2002)

(b) That you have expressly stated that the "the question of winding up of the PIMS (Society) at this stage does not arise (Para 33 of your letter dated 21.10.2002)

(c) That your refusal to comply with the direction of the Board dated 16.4.2002 to wind up the PIMS (Society) is against the interest of the Madras Medical Mission.

The Board has, therefore,

1) Resolved to remove you from the post of Chairman of the Managing Committee of PIMS.

2) Resolved to authorise the Hon. Secretary to (a.) communicate the above decision of the Governing Board to you, (b.) take all steps as may be deemed necessary for protecting the interests of the Madras Medical Mission and the Pondicherry Institute of Medical Sciences and (c.) initiate such legal proceedings required against the PIMS (Society) and others connected with the said society to protect the interests of the Madras Medical Mission.
The above decisions have also been informed to the members of the Madras Medical Mission, at its Annual General Meeting held on the 26th of October 2002, at 6.30 p.m.
In the light of the above, you are removed from the Chairmanship of the Pondicherry Institute of Medical Sciences Managing Committee, and you are hereby requested to return immediately all correspondence files, documents and other materials in your possession pertaining to the Pondicherry Institute of Medical Sciences to the undersigned.
Thanking You,
Yours faithfully,
Sd/-
K.V. George,
Hon. Secretary"
30. Thereafter, on 06.11.2002 the appellant filed the present O.S. As.7and 8 of 2003 against the order of the learned single Judge dated 23.09.2002. On 04.12.2002 the appellant instituted a second suit in C.S. No.848 of 2002 to declare resolution of 26.10.2002 removing him from the Chairmanship of PIMS and the letter c ommunicating it to him dated 05.11.2002 as illegal and to restore him as Chairman of PIMS. The appellant also sought interim injunction in that suit in O.A.No.8 40 of 2002 for restraining the respondent from interfering with the functioning of PIMS. The learned single Judge directed status quo to be maintained. The status quo was that appellant was not the Chairman of PIMS.
31. The appellant has not functioned as the Chairman of PIMS from 1 6.04.2002.

32. The Government of India on 14.11.2002 granted it's approval to MMM for admitting 100 students in PIMS for the academic year 2002-03.
33. The appellant then sought to prevent MMM from obtaining affiliation for PIMS from Pondicherry University for the year 2002-03, and instituted writ petition No.44393 of 2002 in this Court. That writ petition was dismissed by the Division Bench of this Court on 06.02.200 3. In the meantime, affiliation was granted by the University on 29.01.2003, during the pendency of the appeal filed by MMM as also the appellant against the interim order made in the appellant's writ petition and in the writ petition that had been filed by MMM seeking a mandamus to the Pondicherry University to grant affiliation. The judgment of this Court in W.As. No.152, 153 and 310 of 2003 and Wps.No.4439 3 and 44485 of 2002 is reported in 2003 WLR 214.

34. Students were admitted to the PIMS in February 2003 and the college has been functioning since then, the hospital having opened much earlier in mid 2001. The former Dean of the CMC Hospital, Ludhiana is the Dean of PIMS, which, as of February 2003 employed 881 persons of whom 162 are doctors, and incurs a monthly expenditure of Rs.81.21 lakhs. All other divisions of MMM together employ 804 persons of whom 70 are doctors and incur

an expenditure of Rs.79.74 lakhs on their salaries.

35. The applications filed by the applicant in suit C.S.No.848 of 2002 for staying the resolution of the Governing Board of MMC passed on 26.10.2002 removing him from the position of Chairman of PIMS; for an injunction to restrain the respondents from interfering with the appellant's functioning as the Chairman of PIMS, and for a direction to respondents to deposit the money collected from the students admitted to the medical college in a separate account, have also been placed before us to be disposed off along with these appeals.

36. We have heard Shri Ramakrishna, the learned senior counsel for the appellant and Shri Sriram Panchu, learned senior counsel for the respondent.

37. Shri Ramakrishna, who had "strained every nerve" as noted by the learned single Judge, while presenting the case of his client before the learned single Judge, argued the case for the appellant very ably and elaborately.

38. His elaborate submissions may be summarised as under:
The Governing Board of MMM had no power to suspend the appellant from the position of Chairman of PIMS; the meeting of 16.04.2002 of the General Board of MMM is not lawful as no notice of that meeting had been given to the appellant who was also a member of the Board; that the letter of 16.04.2002 is not a notice to show cause, and the decision communicated under that letter was one taken without hearing the appellant and therefore invalid, that there was no resolution of the Board resolving to suspend the appellant as a mere decision of the Board cannot be equated to a resolution; that the decision so taken is a mala fide one as laymen cannot manage a technical institution; that the appellant had not acted against the interests of the MMM in registering the society without informing or obtaining the consent of MMM as the appellant who had contributed greatly to the growth of MMM would not act against it; that the appellant had offered to step down after more members of representative character are co-opted to the Governing Board of the Society formed by him and that till date that society being a non starter, the functioning of PIMS had in no way been affected; that MMM had acquiesced in the registration of the society as there was no formal protest by MMM even after his speech at the Annual General Meeting of MMM on 15.09.2001; that the registration of the society was not for his benefit but was only a fulfillment of his commitment to the Pondicherry Government; that the members of the Governing Board except the appellant are all laymen and are not competent to manage a technical institute; and lastly the suspension and subsequent removal of the appellant as Chairman of PIMS was grossly disproportionate to the alleged misconduct of the appellant.

39. Mr.Ramakrishna invited our attention to the decisions of the Indian and English Courts in support of the propositions that failure to give notice even to one of the members of the Board renders it's proceedings invalid; that disproportionate penalties are liable to be struck down by the

Court, and that arbitrariness and failure to observe procedural fairness invalidates even a non judicial act.

40. The Supreme Court in the case of Parameshwari Prasad Gupta vs. Union of India, AIR 1973 SC 2389 while holding that it cannot be disputed that notice to all the Directors of a meeting of the Board of Directors was essential for the validity of any resolution passed at the meeting, but that it was open to a regularly constituted meeting of the Board of Directors to ratify actions taken pursuant to an invalid resolution, referred to with approval the passages in Halsbury' s Law of England Vol.9, page 46 wherein it is stated that it is essential that notice of the meeting and of the business to be transacted should be given to all persons entitled to participate, and that if a member whom it is reasonably possible to summon is not summoned, the meeting will not be duly convened, even though the omission is accidental or due to the fact that the member has informed the officer whose duty it is to serve notice that he need not serve notice on him. The Court also referred to with approval the passage at page 315 in Volume 6 of Halsbury's wherein it is stated that a meeting of the directors is not duly convened unless due notice has been given to all the directors, and the business put through at a meeting not duly convened is invalid.

41. Counsel invited our attention to some of the decisions of English Courts on which those passages in Halsbury's are based:
In re Portuguese Consolidated Copper Mines, (1889) 42 Ch. D. 160, a case decided by the Court of Appeal, it was held that a member of the Board to whom

notice was required to be given could not waive the notice, and that if such a member was "within reach", and it was perfectly possible to give him notice, then it was the duty of the Director to give him notice of the meeting.

42. Young vs. Ladies' Imperial Club Limited, (1920) 2 K.B. 523, another decision rendered by the Court of Appeal, was a case where action had been taken against a member of a proprietary club at a meeting of the Committee, which meeting was held without giving notice to one of it's members, who had informed the club prior to that meeting that she would not be able to attend the meeting of the committee. It was held that notice ought to have been given even to such a member, as the member of the committee had no power to waive the giving of notice. However, an exception to that rule was recognised. The Master of Rolls observed that if the absent member of the body is at such a distance that it is physically impossible for him to attend in obedience to a summons, then the convener of the meeting is excused from sending the notice to that member, and without any such notice to him the meeting of the body will be properly convened.

43. Regina vs. Barnsley Metropolitan Borough Council, 1976 (1) Weekly Law Reports - 1052 is yet another decision of Court of Appeal wherein it was held by Lord Denning, that taking away the licence from a stall holder in a market, on the ground that he had been found urinating in the side street near the market after the market hours, was excessive and disproportionate as such depriving of licence resulted in the deprivation of his livelihood.

44. The doctrine of proportionality was applied by the Supreme Court in the case of Ved Prakash Gupta vs. M/s. Delton Cable India (P) Ltd., (1984) 2 SCC 569. It was held therein that the punishment of dismissal of an industrial employee was disproportionate in a case where misconduct was the use of abusive language to a co-worker.

45. Ranjit Thakur vs. Union of India, (1987) 4 SCC 611, was a case which arose under the Army Act, 1950, wherein it was held by the Supreme Court, inter alia, that a punishment which is strikingly disproportionate would call for and justify interference, though the choices and quantum of punishment are within the jurisdiction and discretion of the Court Martial. The Court observed that the punishment inflicted should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. In that case the punishment that had been inflicted by the Court Martial was one year rigorous imprisonment and thereafter dismissal from service with an added disqualification of being declared unfit for any future civil employment. Such a grave punishment was inflicted for the offence of disobeying an order of the superior officer directing the accused to eat his food.

46. The use of proportionality as a ground for judicial review was examined by the Supreme Court in depth, with reference to the Administrative law in England as also in India, in the case of Union of India vs. G.Ganayutham, AIR 1997 SC 3387. The Court held that the provision in our country in Administrative Law, in cases where no fundamental freedom was involved, is that the Court/Tribunal will only play secondary role while the primary judgment as to reasonableness will remain with the executive or the administrative authority. The secondary judgment of the Court is to be exercised for the purpose of ascertaining as to whether the executive or administrative authority has reasonably arrived at it's decisions as the primary authority.

47. A three Judge Bench of the Court in the case of B.C. Chaturvedi vs. Union of India, (1995) 6 SCC 749, after referring to the decision of the Constitution Bench in the case of State of Orissa vs. Bidyabhushan Mohapatra, AIR 1963 SC 779, wherein it was held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment, and that it was for the punishing authority to determine the appropriate punishment, concluded, "If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

48. In the case of Kailash Nath Gupta vs. Enquiry Officer, Allahabad Bank, AIR 2003 SC 1377, the Court after referring to the earlier decisions of the Court on the question of proportionality observed that, "..... one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct

reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded."

49. Hurtado vs. People of California, (1883) 110 U.S. SC Reports 51 6 the U.S. Supreme Court with Justice Harlan dissenting, held that the common law procedure of information after examination and commitment by a Magistrate certifying the probable guilt of the defendant, with the right to have aid of a counsel and to cross examine the witnesses produced for the prosecution, satisfies the requirement of due process under the 14th amendment to the U.S. Constitution.

50. In Neelima Misra vs. Harinder Kaur Paintal, AIR 1990 SC 1402, the Court while holding that the appointment of university teachers by the Vice Chancellor is an administrative act and not a judicial act, observed but that administrative officers are also required to act fairly and that for this concept of fairness, neither adjudicative setting nor lites inter parties is necessary. The Court further held thus at paragraph 23 of that judgment: "The duty to act judicially or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending on the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in administration. But then when even such an administrative decision unless it affects one's personal rights or one's property rights or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistent with the rules of natural justice."

51. In the case of Mohammed Mustafa vs. Sri Abu Bakar, AIR 1971 SC 361 it was held that as the finding that had been given in that case had been reached without proper pleadings and necessary issues, those findings could not bind any of the parties to the suit.

52. Learned counsel for appellant invited our attention to the passage under the heading 'Reasonableness and Proportionality" at page 40 3 of Wade and Forsyth Administrative Law - 7th Edition, and to pages 494-508 of that book in the chapter "The Right to a fair Hearing". At page 494, the authors have, inter alia, stated that, "It is fundamental to fair procedure that both sides should be heard audi alteram partem, hear the other side'....." The authors have observed that "But the stream of cases that come before British and Commonwealth courts show that overlooking it is one of the most common legal errors to which human nature is prone". Lord Loreburn's off quoted words in the case of Board of Education vs. Rice, 1911 AC 179 that all those called upon to decide questions of fact and/or law "..... must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything", has been set out in the discussion under the heading, "Lord Loreburn's epitome" at page 503 .

53. Regarding reasonableness and proportionality the authors have expressed their view at page 403 that they cover a great deal of common ground and the striking down of a penalty as being excessively severe for a small offence can be based as easily on disproportionality as on unreasonableness.

54. Mr.Sriram Panchu, learned senior counsel for the respondents submitted that the conduct of the appellant necessitated and amply justified the action taken by respondents; that the meetings of the Governing Body of MMM had been held in accordance with law; that no notice of the 16.04.2002 meeting was required to be given to appellant as he was not in India; that the appellant having demonstrated by his conduct that he could no longer be trusted to protect and promote MMM's ownership, control and management of PIMS, his removal from the position of Chairman of PIMS was in no way disappropriate to the gravity of misconduct; that appellant was in no way prejudiced by such removal as he continued to be the Director of ICVD which is his full time occupation and is even now receiving a salary of Rs.1.74 crores per annum in addition to valuable perquisites; that appellant had no vested right to be the Chairman of PIMS, as that responsibility which was not for any fixed duration, and carried no remuneration or special privileges, could at any time be withdrawn by the Governing Board of MMM which had entrusted him with that responsibility; that the Board of MMM had at all times acted fairly; that the Board had the power to direct him not to function for any specific period and also to divest him completely of that responsibility; that the Board had given the opportunity to appellant to retrace his steps, had considered his explanation and had taken it's decisions after due deliberation.

55. We have carefully considered the rival submissions. Appellant had been entrusted with the responsibility of functioning as Chairman of the Pondicherry Institute of Medical Sciences, the name given to Medical college and Hospital that was to be, and has since been established by MMM. This was not an appointment to a post under the MMM for any specified period. No emoluments and perquisites are attached to that office. Appellant's post with the MMM is that of Director of ICVD for which he is paid a handsome salary and provided with valuable perquisites.

56. Whether the suspension and subsequent removal of appellant from that position of Chairman of PIMS Committee has at all injured any vested right of the appellant, has to be considered at the outset. Appellant clearly had no vested right to become, function as, or continue to be Chairman of PIMS. The overall responsibility for the proper functioning of MMM including all it's divisions and projects vested in the Governing Board of MMM. That Board had nominated the appellant to function as Chairman for it's latest project, the PIMS. This was an additional responsibility given to the appellant which could at any time be withdrawn. Such withdrawal of the additional responsibility does not violate any vested right of the petitioner. The appellant cannot against the wishes of the MMM Board, thrust himself upon the Board of MMM and demand that he be retained as Chairman of PIMS.

57. The appellant's troubles are entirely of his own making. By his own actions he lost in considerable measure the high level of trust and confidence that the Board of MMM had reposed in him from the inception. Appellant's remuneration of Rs.1.73 crores per annum with many perquisites reflect the esteem and confidence that MMM's Board had for him and it's readiness to reward in ample measure the efforts made by appellant to make ICVD a reputed super speciality center for heart diseases where, according to the appellant, nearly 2000 surgeries are performed each year. The Board of MMM had chosen to give him the additional responsibility of chairing the

managing committee for the medical college at Pondicherry which project with an outlay of Rupees eighty crores was bigger than all the existing divisions of MMM.

58. During the course of implementation of this project, personal ambition and possibly avarice appear to have prevailed over the excellent sense of discretion that appellant had displayed till mid 2001, by which time substantial progress had been made in the implementation of the project, with the letter of intent for establishing the college having been received from the Government of India and the work on the buildings progressing rapidly.

59. The appellant some time prior to August 2001 appears to have conceived the idea of divesting MMM of it's control of PIMS and proceeded with such a plan secretively. The justification for such divestiture of control was sought to be founded on the alleged desire of the Pondicherry Government to have the college controlled by a society established at Pondicherry, even though there was no requirement in law that the institutions in that Union Territory should be controlled by the societies established in that union territory.

60. In order to fortify his claim that the Government in Pondicherry had desired such a course of action, he appears to have secured a letter signed by an Under Secretary to the Government which is dated 1 4.08.2001, but which letter was not disclosed by him to the Board of MMM, although the formation of a new society for taking over this project was a matter of utmost concern to the MMM involving control over the assets of worth several crores and the management of modern medical college with a well equipped hospital.

61. With a view to be in a position to claim that he had informed MMM about the society that he was constituting, a society with a name identical to that of the institution owned and controlled by MMM was registered by him on 14.09.2001, a day prior to the AGM of MMM. The Memorandum and Rules of that society have been signed at Pondicherry by him, his wife, their son, and four of his friends, a structural Engineer and his wife, a management consultant, and an Ophthalmologist.

62. In the speech made by the appellant at the AGM of MMM he referred to the oral assurance that he had allegedly given to the Chief Minister that the Government's desire would be honoured "by us" and that as Chairman of the PIMS he had "initiated necessary formalities". He did not disclose that he had already registered the society the previous day, that under the Rules of that Society he was to be Chairman and Chief Executive of that society for life, and that the Board over which he was to preside would have absolute power at it's discretion to admit, refuse admission, refuse renewal and expel members. The society's rules were designed to ensure complete control of the same by the appellant.

63. After the registration of the society in September 2001 the appellant did not disclose it's formation to the MMM till 08.04.2002. Appellant obtained a certificate dated 04.03.2002 from the Pondicherry Government regarding the minority status of the institution in the name of

PIMS society, even though the PIMS was not established by PIMS society, but by MMM, and no such certificate was required for MMM's project, MMM having obtained such certificate in December 2001 from the Tahsildar, Ambattur, and the Government of India had also granted on 01.03.2002, the letter of intent for establishing the new medical college. The fact that such a certificate in the name of the society had been obtained was also not disclosed till 08.04.2002.

64. In his letter of 08.04.2002 the appellant referred to the mode of taking control of PIMS by the society and referred to the consultation in that regard with legal and financial experts. These far reaching moves had been made by the appellant without any consultation and without securing the consent of the Board of MMM.

65. This conduct of the appellant can only be described as a devious attempt to divest MMM of it's managerial control over and possibly the ownership of PIMS which project he had been asked to oversee for MMM. This conduct clearly amounted to breach of trust. Had the Board of MMM remained a silent spectator even after being made aware of these actions of appellant, it would have been guilty of dereliction of the duty owed by it to members of MMM to safeguard the assets of MMM.

66. Immediately after the appellant's letter of 08.04.2002 along with which he disclosed for the first time the factum of registration of the society as also the contents of its memorandum and rules, the Board of MMM took the action which in the circumstances was clearly the appropriate action, namely the suspension of the appellant from the position of Chairman of the Managing Committee of PIMS temporarily. That suspension was accompanied by a demand that the appellant should wind up the society during the period of suspension. The time so given to the appellant to retrace his steps is indicative of the desire of MMM Board to restore the cordial relationship that had existed earlier. The appellant however chose not to wind up the society and that society continue to exist even now.

67. As noticed earlier, the post of the Chairman of the managing committee for the PIMS was only an additional responsibility given to the appellant by the MMM Board. The Board which had entrusted the additional responsibility could at any time withdraw that additional responsibility either temporarily or permanently, as no fixed tenure had been granted. It was at all times for the Board MMM to decide as to who the Chairman of the Committee of PIMS should be and it was the duty of the Board of MMM to take all necessary steps expeditiously to safeguard the interests of MMM. The appellant could not, even while acting against the interests of MMM, vis-a-vis PIMS, have been allowed to remain in control of project.

68. The validity of the meeting of the Board of MMM on 16.04.2002 and the decision taken there at, do not suffer from any legal infirmity by reason of the appellant not having been given notice of that meeting. The appellant was not in India on that day. He had gone to Seoul, where he stayed till 20th. The requirement in law that the meetings of the Board are to be held only after due notice to those entitled to attend is subject to the well

recognised exception that such notice is not required to be given to members who cannot reasonably be summoned by reason of the distance which makes it physically impossible for such members to attend that meeting. That exception was recognised by the Court of Appeal In re Portuguese Consolidated Copper Mines, (1889) 42 Ch. D. 160, and in the case of Young vs. Ladies' Imperial Club Limited, (1920) 2 K.B. 523, and has been recognised as a part of the common law.

69. The suspension of the appellant without giving him a hearing in the circumstances, by no reason, is unfair. The appellant had dropped a small bomb shell when he circulated the letter of 08.04.2002 which clearly showed that the appellant could no longer be entrusted with the responsibility of over-seeing the project owned by MMM as he was clearly trying to act against the interests of MMM, having constituted a society on and of his own in order to take over the control of PIMS and had even gone to the extent of obtaining financial and legal advice as to the best mode of securing such control without, at any time, obtaining consent of the Board of MMM, let alone informing the Board of MMM. His actions spoke loud and clear. His immediate suspension was a necessity. Rules of fair play do not require that even in cases where the circumstances fully warranted suspension, suspension should not be effected without a hearing. A hearing given after effecting suspension in the absence of any binding contract or Rules, is sufficient compliance with the principle of audi alteram partem.

70. The decisions taken by the Board of MMM at their meeting of 16 .04.2002 have been duly recorded. There is no dispute about the genuineness of the record. 17 of the 20 members of the Board had attended the meeting on 16.04.2002 and have signed the minutes. The fact that the word 'resolution' is not used in the minutes, and word used is 'decision' , does not make any difference to legal effect of the decisions taken. Resolutions are decisions. The failure to use the term resolutions does not imply that the decision had not been taken.

71. The time that was given to appellant to retrieve his steps was also a time during which he could offer his justification, if any, for having taken those steps and the reason, if any, for not having to retrieve them. Learned single Judge was not in error in construing the letter of 16.04.2002 as notice giving opportunity to the appellant to explain his conduct.

72. The explanation that was offered by the appellant after the learned single Judge gave him time to submit one, was considered by the Governing Board on 26.10.2002. The appellant does not complain that he had no notice of that meeting. Though he had such notice he chose not to attend the meeting. At that meeting the Governing Board took note of the fact that the appellant had formed the new society without the permission of MMM; that the appellant was unwilling to wind up the society; and that the Board had resolved to remove him from the position of Chairman of the managing committee of PIMS. Had the appellant desired to present his case in person to the MMM

Board he could very well have attended the meeting on 26.10.2002. He chose not to utilise the opportunity. Opportunity having been afforded to him, the

appellant cannot now complain after having failed to utilise that opportunity.

73. The submission for the appellant that the misconduct, if any, is not of such gravity as to warrant the removal of the appellant from the position of Chairman of PIMS, is not the one which can be accepted. The conduct of the appellant was such as to result in the justifiable loss of confidence that MMM had reposed in him. The formation of a society of which appellant would be life time Chairman and Chief Executive, in the very name in which MMM's project was carried, without the consent of MMM, even while being the Chairman of that project, the failure to disclose that for over six months and in the meantime securing letters from the Pondicherry Government in the name of the new Society as if that society was running PIMS and not MMM, and obtaining without MMM's consent legal and financial advice for divesting MMM of it's control over PIMS, clearly showed that MMM's interest vis-a-vis PIMS were not safe in his hands.

74. The removal of the appellant from the position Chairman of the Managing committee of PIMS was rendered inevitable by his refusing to wind up the society and persisting with it. Such suspension and subsequent removal were in no way disproportionate to the gravity of the misconduct committed by the appellant.

75. Although the appellant seeks to project the tussle between him and the members of the Board of MMM as between a dedicated professional and a group of business men whose only interest is profit, his own conduct displays that commercial considerations were in no way absent from his moves to secure control over the PIMS. The medical college and the hospital project involving an outlay of about Rs.80.00 crores was sought to be taken over by the appellant's society which in the appellant's plan was to function as a managing agent for thirty years with a right to receive remuneration therefor. That in effect meant that appellant was to have lifetime control of PIMS as the Chairman and Chief Executive for life of the society formed by him.

76. The Bishop of the Orthodox Syrian Church who is the President of the MMM had in no uncertain terms informed the Pondicherry Government that the society founded by the appellant has no right of any kind over the institution established by MMM. The appellant's attempts clearly had no support of the Church whose members had established MMM and the head of which church at Madras was it's President.

77. We do not find any merit in the appeals as also in the applications. The appeals and the applications are dismissed.

Index : Yes
Website : Yes

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